

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

James Furtick, et al.,

Plaintiff,

vs.

State of South Carolina, et al.,

Defendant.

C.A. No.: 2:00-03215-RBH

ORDER

This matter is before the court for review of the Report and Recommendation of United States Magistrate Judge Robert S. Carr, made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. See Mathews v. Weber, 423 U.S. 261, 270-71 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. See 28 U.S.C. § 636(b)(1).

According to the Report and Recommendation, the court was advised that the plaintiff, James Furtick, died on March 2, 2008. According to Rule 25(a)(1) of the Federal Rules of Civil Procedure, if a party to an action dies, a motion for substitution may be made by any party or by the decedent's successor or representative within ninety (90) days after service of a statement

noting the death. If the motion is not made within ninety (90) days of the notice of death, the action by or against the decedent must be dismissed. On August 6, 2008, an Order [docket entry # 515] was issued by the court advising that unless an appropriate party made a motion under Rule 25 of the Federal Rules of Civil Procedure for substitution within ninety (90) days, this action would be subject to dismissal. To date, nothing has been filed with the Court, the Report and Recommendation was returned to the court on December 11, 2008 [docket entry #560] marked undeliverable, "deceased," and no objections to the Report and Recommendation have been filed. In the absence of objections to the Report and Recommendation of the Magistrate Judge, this court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

After a thorough review of the Report and Recommendation and the record in this case, the court adopts Magistrate Judge Carr's Report and Recommendation and incorporates it herein. It is therefore

ORDERED that this action is hereby DISMISSED with prejudice as to plaintiff James Furtick, for failure of a party to prosecute the claim and failure to respond to the Order of this court for substitution of a party for plaintiff, James Furtick, pursuant to Rule 41(b) and 25(a) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

s/ R. Bryan Harwell
R. BRYAN HARWELL
United States District Judge

Florence, South Carolina
December 22, 2008